

From: avram.berman@ajba.com
Sent: Wednesday, April 16, 2025 6:54 PM
To: 'Nowack, Sarah L.'
Cc: 'kristin.oneill@dos.ny.gov'; 'christen.smith@dos.ny.gov'; 'Theodore Hayes'; 'Phillips, Melissa A.'
Subject: RE: (Archive Copy) RE: UPDATED: 04/14/2025 RE: Request for Appeal pursuant to Case 615970, Ticket HC244069
Attachments: verdict.pdf; phone_20250416-174159_4286618_31868412736956.wav; RE: Barn on 435 Westfall Road - Code Ticket # HC244069; UPDATED: 04/14/2025 RE: Request for Appeal pursuant to Case 615970, Ticket HC244069; WorkArea-DownloadAsset.aspx-id-21474844330.pdf; RE: (Archive Copy) RE: UPDATED: 04/14/2025 RE: Request for Appeal pursuant to Case 615970, Ticket HC244069

Dear Ms. Nowak,

It appears in your obtuse reply to my email today, you ignored and were unresponsive to all of the questions and concerns I asked you to address in the email I sent you yesterday on April 15, 2025, which is found in the body of this email, which I have also reposted below and attached (see attachment: (UPDATED 04142025* RE Request for Appeal pursuant to Case 615970 Ticket HC244069.msg) and am requesting for a **3rd time** you address my concerns and my questions.

I am trying to move forward on the appeals process, but as I stated to you repeatedly, I have not been provided with a legal summary as to the basis (cause) of how the guilty verdict was determined and as such, until I receive this summary or an explanation from the hearing examiner as to how they came to render their decision, it is unclear as to how I can appeal a case based simply on the verdict, without any explanation as to how the guilty verdict was legally derived.

Please note: in my subject line from my email on April 15, 2025, the subject line incorrectly stated the date of, 04142025 when obviously it should have stated, 04152025*).

I'm also attaching another voicemail, which I left today, April 16, 2025 at 5:42PM (see attachment: phone_20250416-174159_4286618_31868412736956.wav)

If no cause for the verdict has been given and you are unwilling to address this concern and remedy a solution, then by not addressing my concerns and answering my questions, you are willfully obstructing my ability to appeal the case. Am I expected to go into an appeal hearing and state that I am appealing the verdict because no cause was given, because as this point in time, all I have is a verdict with no explanation from the hearing examiner as to why I am Guilty.

(3rd attempt) – please address my concerns and answer the questions below and those above:

Dear Ms. Nowack,

Before I begin, when submitting your email reply, please reply to all email addresses, preserve this document chain by including all prior emails, and include responses below each question.

In addition, please do not share this email with anyone prior to reading it.

Thank you,

I'm requesting an appeal pursuant to the Guilty verdict I received regarding Case number 615970.

I've attached verdict.pdf which contains a mailed document, postmarked March 25, 2025 which I physically received in the mail on April 04, 2025. There were no instructions on how to file an appeal that accompanied the verdict and initially thought the Zoning Board of Appeal had jurisdiction. However, during my call today with Melissa Phillips, Senior Zoning Analyst from the Zoning Board of Appeal, she indicated that they did not and as such, I am reaching out to you today to address my concerns and questions below:

I also attached the appeal form: WorkArea-DownloadAsset.aspx-id-21474844330.pdf

(source: <https://www.cityofrochester.gov/departments/finance-department/municipal-code-violations-and-tickets>)

which states in part, the following:

3. Reasons for your appeal of the original determination

However, since there were no findings provided from the hearing examiner regarding the legal basis of how they came to a decision (determination) that rendered a Guilty verdict, I cannot give a reason for an appeal and as such am requesting the finding be made available.

My understanding is the appeal form must be submitted within 30 days, from the hearing, which took place on March 24, 2025, which expires next week, however since I have not received the findings from the hearing examiner and can't complete the appeals form, I would ask that I be given 30 calendar days from the date I receive the findings to complete and submit the appeals form.

(Response below):

Please unmask the identity of the hearing examiner who's signature appears in the verdict.pdf.

(Respond below):

The following set of questions below were directed to Matthew Simonis – Director of Zoning and Secretary of the Zoning Board of Appeal and were not answered in their entirety, despite 8 attempts. As such, I would like them to all be answered to my satisfaction prior to an appeal hearing and with ample time prior to the hearing, to submit other questions in response, if needed. I would also like the contact information beforehand as to who will be answering my questions as stated below:

“(8th attempt):

*Based on your previous answer that the General Purpose Barn located at 435 Westfall Road, **PRIOR** to receiving Planning Commission approval to use the Barn as a bar / restaurant, did not have a legal permitted use, can you please explain why it didn't have a permitted legal use and at what point prior, did it have a legal permitted use (if any) and what that use was – appreciate.”*

(response below):

As there has been a coordinated effort to obstruct my access to FOIL requests and general information by Patrick Beath, Corporate Counsel for the City of Rochester, in order to maintain impartiality during the hearing, I request that any member and / or staff that works for the City of Rochester or has ties to the Law Department recuse themselves.

(Response below):

I submitted a FOIL request: FOIL 2025-1584 on March 24, 2025 so as to receive a transcript of the March 24, 2025 hearing and as of the writing of this email, April 15, 2025 I have received no response. I request that any scheduled date for the appeal allots for enough time to receive and review the transcript so that I may incorporate it into my appeal.

(Response below):

Can you please provide some detail as to how the appeal process works and its format, etc.

(Response below):

I look forward to your discretion, responses and recommended next steps, so as to effectuate an appeal.

Yours etc.,

Avram Berman
CEO South Wedge, Inc.
435 Westfall Road
Rochester, NY 14620
(585)461-2060
aberman7@gmail.com

Cc: Kristin O'Neill - Assistant Director for the Committee on Open Government
Cc: Christen Smith - Senior Attorney for the Committee on Open Government
Cc: Theodore Hayes - External Regional Associate for Senate District 56
Cc: Melissa Phillips – Senior Zoning Analyst

From: Nowack, Sarah L. <Sarah.Nowack@CityofRochester.Gov>
Sent: Wednesday, April 16, 2025 3:53 PM
To: 'avram.berman@ajba.com' <avram.berman@ajba.com>
Cc: kristin.oneill@dos.ny.gov; christen.smith@dos.ny.gov; 'Theodore Hayes' <thayes@nysenate.gov>; Phillips, Melissa A. <Melissa.Phillips@CityofRochester.Gov>; Rodriguez, Jacqueline <Jacqueline.Rodriguez@CityofRochester.Gov>
Subject: RE: (Archive Copy) RE: UPDATED: 04/14/2025 RE: Request for Appeal pursuant to Case 615970, Ticket HC244069

Avram,

Your appeal request form must be submitted within (30) calendar days from the date of the finding. The form should be submitted to the Parking and Municipal Code Violations Bureau at the following address:

200 E. Main St
Suite B-001
Rochester, NY 14604

Thank you.
Sarah



Sarah L. Nowack
Director of Parking
City of Rochester Bureau of Parking
200 East Main St Suite B-001
Rochester, New York 14604
Office: 585-428-6618
Sarah.Nowack@cityofrochester.gov
garageparking@cityofrochester.gov
www.cityofrochester.gov

From: avram.berman@ajba.com <avram.berman@ajba.com>
Sent: Wednesday, April 16, 2025 12:09 PM
To: Nowack, Sarah L. <Sarah.Nowack@CityofRochester.Gov>

Cc: kristin.oneill@dos.ny.gov; christen.smith@dos.ny.gov; 'Theodore Hayes' <thayes@nysenate.gov>; Phillips, Melissa A. <Melissa.Phillips@CityofRochester.Gov>

Subject: RE: (Archive Copy) RE: UPDATED: 04/14/2025 RE: Request for Appeal pursuant to Case 615970, Ticket HC244069

UPDATED!

April 16, 2025

(2nd Attempt)

Good Afternoon Ms. Nowack,

As I have not heard back from you and my time is running out to appeal the verdict pursuant to Case 615970, I'm resending you this email in hopes that you will reply expeditiously – I also left you a voicemail today, April 16, 2025 at 11:22am (see attachment: phone_20250416-112140_4286618_12199725344251.wav).

During previous efforts, prior to my appeal on March 24, 2025, on March 18 and 20 of 2025, I sent you an email requesting an adjournment as a result of the willful obstruction of my discovery process for information pertaining to Ticket HC244069 by Corporate Counsel, Patrick Beath and Matthew Simonis, Director of Zoning, however you refused to respond to me (see attachment: RE Barn on 435 Westfall Road - Code Ticket # HC244069.msg).

It's unclear at this point, as to how we proceed "impartially" with an appeal, when as the interim Director of Parking, which also encompasses Municipal Code violations, you are refusing to communicate with me, either through your own volition or because you are being directed by the Law Department or other, etc.

As you are aware, the City of Rochester Law Department willfully obstructed my discovery process and made false statements, not only to myself, but also to Kristin O'Neill – the Assistant Director for the Committee on Open Government as well the hearing examiner during my case on March 24, 2025, which I can prove, if and when I receive my FOIL request 2025-1584, submitted on March 24, 2025, which as of April 16, 2025 has not been received.

If you're not willing to communicate with me, then your obstruction the process.

I look forward to your discretion, responses and recommended next steps, so as to effectuate an appeal.

Yours etc.,

Avram Berman
CEO South Wedge, Inc.
435 Westfall Road
Rochester, NY 14620
(585)461-2060
aberman7@gmail.com

Cc: Kristin O'Neill - Assistant Director for the Committee on Open Government
Cc: Christen Smith - Senior Attorney for the Committee on Open Government

Cc: Theodore Hayes - External Regional Associate for Senate District 56

Cc: Melissa Phillips – Senior Zoning Analyst

From: avram.berman@ajba.com <avram.berman@ajba.com>

Sent: Tuesday, April 15, 2025 2:26 PM

To: 'Sarah.Nowack@CityofRochester.Gov' <Sarah.Nowack@CityofRochester.Gov>

Cc: 'kristin.oneill@dos.ny.gov' <kristin.oneill@dos.ny.gov>; 'christen.smith@dos.ny.gov' <christen.smith@dos.ny.gov>; 'Theodore Hayes' <thayes@nysenate.gov>; 'melissa.phillips@cityofrochester.gov' <melissa.phillips@cityofrochester.gov>

Subject: UPDATED: 04/14/2025 RE: Request for Appeal pursuant to Case 615970, Ticket HC244069

Sarah L. Nowack

Director of Parking

City of Rochester Bureau of Parking

200 E. Main Street | Suite B-001 | Rochester, NY 14604

Office: 585.428.6618

garageparking@cityofrochester.gov

Sarah.Nowack@cityofrochester.gov

Dear Ms. Nowack,

Before I begin, when submitting your email reply, please reply to all email addresses, preserve this document chain by including all prior emails, and include responses below each question.

In addition, please do not share this email with anyone prior to reading it.

Thank you,

I'm requesting an appeal pursuant to the Guilty verdict I received regarding Case number 615970.

I've attached verdict.pdf which contains a mailed document, postmarked March 25, 2025 which I physically received in the mail on April 04, 2025. There were no instructions on how to file an appeal that accompanied the verdict and initially thought the Zoning Board of Appeal had jurisdiction. However, during my call today with Melissa Phillips, Senior Zoning Analyst from the Zoning Board of Appeal, she indicated that they did not and as such, I am reaching out to you today to address my concerns and questions below:

I also attached the appeal form: WorkArea-DownloadAsset.aspx-id-21474844330.pdf

(source: <https://www.cityofrochester.gov/departments/finance-department/municipal-code-violations-and-tickets>)

which states in part, the following:

3. Reasons for your appeal of the original determination

However, since there were no findings provided from the hearing examiner regarding the legal basis of how they came to a decision (determination) that rendered a Guilty verdict, I cannot give a reason for an appeal and as such am requesting the finding be made available.

My understanding is the appeal form must be submitted within 30 days, from the hearing, which took place on March 24, 2025, which expires next week, however since I have not received the findings from the hearing examiner and can't complete the appeals form, I would ask that I be given 30 calendar days from the date I receive the findings to complete and submit the appeals form.

(Response below):

Please unmask the identity of the hearing examiner who's signature appears in the verdict.pdf.

(Respond below):

The following set of questions below were directed to Matthew Simonis – Director of Zoning and Secretary of the Zoning Board of Appeal and were not answered in their entirety, despite 8 attempts. As such, I would like them to all be answered to my satisfaction prior to an appeal hearing and with ample time prior to the hearing, to submit other questions in response, if needed. I would also like the contact information beforehand as to who will be answering my questions as stated below:

“(8th attempt):

*Based on your previous answer that the General Purpose Barn located at 435 Westfall Road, **PRIOR** to receiving Planning Commission approval to use the Barn as a bar / restaurant, did not have a legal permitted use, can you please explain why it didn't have a permitted legal use and at what point prior, did it have a legal permitted use (if any) and what that use was – appreciate.”*

(response below):

As there has been a coordinated effort to obstruct my access to FOIL requests and general information by Patrick Beath, Corporate Counsel for the City of Rochester, in order to maintain impartiality during the hearing, I request that any member and / or staff that works for the City of Rochester or has ties to the Law Department recuse themselves.

(Response below):

I submitted a FOIL request: FOIL 2025-1584 on March 24, 2025 so as to receive a transcript of the March 24, 2025 hearing and as of the writing of this email, April 15, 2025 I have received no response. I request that any scheduled date for the appeal allots for enough time to receive and review the transcript so that I may incorporate it into my appeal.

(Response below):

Can you please provide some detail as to how the appeal process works and its format, etc.

(Response below):

I look forward to your discretion, responses and recommended next steps, so as to effectuate an appeal.

Yours etc.,

Avram Berman
CEO South Wedge, Inc.
435 Westfall Road
Rochester, NY 14620
(585)461-2060
aberman7@gmail.com

Cc: Kristin O'Neill - Assistant Director for the Committee on Open Government
Cc: Christen Smith - Senior Attorney for the Committee on Open Government
Cc: Theodore Hayes - External Regional Associate for Senate District 56
Cc: Melissa Phillips – Senior Zoning Analyst

From: avram.berman@ajba.com <avram.berman@ajba.com>

Sent: Friday, April 11, 2025 2:05 PM

To: 'melissa.phillips@cityofrochester.gov' <melissa.phillips@cityofrochester.gov>

Cc: 'kristin.oneill@dos.ny.gov' <kristin.oneill@dos.ny.gov>; 'christen.smith@dos.ny.gov' <christen.smith@dos.ny.gov>;

'Theodore Hayes' <thayes@nysenate.gov>

Subject: Request for Appeal with Zoning Board of Appeal pursuant to Case 615970, Ticket HC244069

Updated!

Melissa Phillips, Senior Zoning Analyst

- [585 428-7054](tel:5854287054)

Hi Ms. Phillips,

Before I begin, when submitting your email reply, please reply to all email addresses, preserve this document chain by including all prior emails, and include responses below each question.

In addition, please do not share this email with anyone prior to reading it.

Thank you,

You are listed as the primary contact on the City of Rochester's Zoning Board of Appeal website.

<https://www.cityofrochester.gov/departments/neighborhood-and-business-development/zoning-board-appeals-zba>

I'm requesting an appeal pursuant to the Guilty verdict I received regarding Case number 615970.

I've attached verdict.pdf which contains a mailed document, postmarked March 25, 2025 which I physically received in the mail on April 04, 2025.

Please unmask the identity of the hearing examiner who's signature appears in the verdict.pdf.

(Respond below):

As there were no findings from the hearing examiner regarding the legal basis of how they came to a decision that rendered a Guilty verdict, I am requesting the finding be made available, so I can have "something" to appeal against with the ZBA. My understanding is the appeal process must be submitted within 30 days of the hearing, however, since I have not received the findings from the hearing examiner, I would ask that I be given additional time, to effectuate a response.

(Response below):

I would ask that Mr. Simonis, who is identified as the Secretary of the ZBA recuse himself, as he obstructed several attempts to answer questions I requested that were pertinent to Ticket HC 244069 and the case that ensued.

(Response below):

The following set of questions below were directed to Mr. Simonis and were not answered in their entirety, despite 8 attempts. As such, I would like them to all be answered to my satisfaction prior to the appeal hearing with the ZBA and with ample time prior to the hearing, to submit other questions in response, if needed. I would also like the contact information beforehand as to who will be answering my questions as stated below:

"(8th attempt):

*Based on your previous answer that the General Purpose Barn located at 435 Westfall Road, **PRIOR** to receiving Planning Commission approval to use the Barn as a bar / restaurant, did not have a legal permitted use, can you please explain why it didn't have a permitted legal use and at what point prior, did it have a legal permitted use (if any) and what that use was – appreciate."*

(response below):

As there has been a coordinated effort to obstruct my access to FOIL requests and general information by Patrick Beath,

Corporate Counsel for the City of Rochester, in order to maintain impartiality during the hearing, I request that any member and / or staff that works for the City of Rochester or has ties to the Law Department recuse themselves.

(Response below):

I submitted a FOIL request: FOIL 2025-1584 on March 24, 2025 so as to receive a transcript of the March 24, 2025 hearing and as of the writing of this email, April 11, 2025 I have received no response. I request that any scheduled date for the appeal with the ZBA allots for enough time to receive and review the transcript so that I may incorporate it into my appeal.

(Response below):

I look forward to your discretion, responses and recommended next steps, so as to effectuate an appeal before the ZBA.

Yours etc.,

Avram Berman
CEO South Wedge, Inc.
435 Westfall Road
Rochester, NY 14620
(585)461-2060
aberman7@gmail.com

Cc: Kristin O'Neill - Assistant Director for the Committee on Open Government
Cc: Christen Smith - Senior Attorney for the Committee on Open Government
Cc: Theodore Hayes - External Regional Associate for Senate District 56